IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO.2179 OF 2004
IN
FIRST APPEAL NO.766 OF 2004

Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders.

Shri Rajesh A.More for the Applicant.

Shri Pramod Pawar for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 30th August, 2004.

P.C.:

1. Rule. The Respondent waives service. Perused the impugned Judgment and Order.

2. From the submissions made by the learned Advocates appearing for the parties, it appears that there is a dispute between the parties as regards possession of the property held by the deceased. Both the parties are claiming to be in possession. However, I find that there is no specific finding recorded by the trial Court as regards possession. Moreover in the present Civil Application there is no averment made as regards

possession of the properties of the deceased and no interim relief has been claimed as regards possession of the properties of the deceased. Therefore, I am not considering the submissions made by the learned Counsel appearing for the parties as regards possession of the properties held by the deceased.

3. Clause 3 of the operative part of the impugned Judgment and Order reads thus:

> "The Defendant is entitled to get estate of late Alfraid Khristi on the basis of Will and Testament dated 19.4.1994."

The said order has been passed on counterclaim filed by the Respondednt/Defendant. As the First Appeal is admitted for final hearing, operation of the said clause 3 is required to be stayed.

4. Hence the Civil Application is disposed of by directing that clause 3 of the operative part of the impugned Judgment and Order will remain stayed till final disposal of the appeal.

5. There will be no order as to costs.

Judge.